BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of		
	)	
	)	
Amendment of Parts 2 and 15 of the	)	
Commission's Rules to Further Ensure	)	ET Docket 98-76
That Scanning Receivers Do Not	)	RM-9022
Receive Cellular Radio Signals	)	

COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")[1] hereby submits its Comments in the above-captioned proceeding. CTIA is pleased that the Commission has committed to "close any loop-holes" in the current rules governing scanning receivers, and except as noted below, CTIA supports the Commission's proposals to modify its existing rules regarding radio scanners.[2]

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[1] CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

[2] Amendment of Parts 2 and 15 of the Commissions Rules to Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals, Notice of Proposed Rulemaking, RM No. 9022, ET Docket 98-76 (released June 3, 1998) [hereinafter "NPRM"].

The Commission's rules require that scanning receivers ("scanners") be incapable of receiving Domestic Public Cellular Radio Telecommunications Service.[3] CTIA agrees with the Commission that while these rules "[have generally] been successful in preventing the manufacture and import of scanning receivers that can tune Cellular Service frequencies directly . . . the current rules have not been fully effective." While the proposed rules address important issues regarding scanning receivers and promise to be more successful in protecting the privacy of cellular communications than the existing rules, inexplicably the rules do not reference the *Wireless Telephone Protection Act of 1998*, 105 P.L. 172, 112 Stat. 53, which was signed into law on April 23, 1998. The Commission's scanner rules should be modified to reflect these recent amendments to the U.S. Code. In addition, as set forth below, the Commission should broaden the definition of "manufacture."

The Definition of "Manufacturing"

The Commission should modify its definition of "scanning receiver" to track the definition Congress

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[3] 47 C.F.R. § 15.121(a).

recently adopted in the *Wireless Telephone Protection Act of 1998* amending 18 U.S.C. § 1029(e)(8) to provide:

> the term "scanning receiver" means a device or apparatus that can be used to intercept a wire or electronic communication in violation of chapter 119 [the wiretap law] or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument.

The use of this statutory definition would complement the U.S. Code provisions that relate to scanning receivers, and eliminate the need for special treatment of cellular transceivers that can be used in a scanning mode.[4]

"Manufacturing" a scanner to receive cellular frequencies is a violation of the Commission's rules.[5] Last year, in an attempt to clarify the scope of this restriction, the Commission released a Public Notice declaring that any person or business entity that engages in the "modification of scanners on a substantial scale," enabling the device to receive cellular service, will be considered to constitute manufacture of such devices in violation of the FCC's rules.[6] Part 15 does not now

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[4] The Commission proposes to address such cellular transceivers in ¶ 16 of the NPRM.

[5] See 47 C.F.R. § 15.37(f).

[6] Manufacturing Illegal Scanners Includes Scanner Modification, Public Notice, DA 97-1440, 1,1 (July 10, 1997); NPRM at ¶ 11.

specifically address this situation, and the Commission proposes to amend Section 15.121 to clarify that the modification of a scanner constitutes manufacturing when the modification is conducted by "any entity or organization that modifies scanning receivers as a business or on an ongoing basis."[7]

CTIA supports the Commission's proposal to modify the language of Part 15 to clarify that the term "manufacture of scanning receivers" includes modifications that permit the scanner to receive cellular telephone frequencies. However, there is no basis in law or policy for permitting anyone to modify a scanner for the purpose of receiving cellular communications.[8] Accordingly, CTIA objects to the Commission's proposal to reach only those persons who modify scanners "as a business or on an ongoing basis." Instead, just as the Commission has proposed that "any modification to a scanning receiver to receive [cellular communications]" will void the scanner's FCC certification,[9]

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[7] NPRM, at ¶ 11.

[8] *See* Section 302(d)(1) of the *Communications Act of 1934, as amended* (the Commission is commanded to deny equipment authorization to any scanning receiver that is capable of receiving cellular communications).

[9] *See* NPRM, Appendix B, proposed rule 15.121(d)(emphasis added).

the first sentence of Section 15.121(d) of the Rules should be amended to provide that:

> Any modification of a scanning receiver to receive transmissions from the Cellular Radiotelephone Service frequency bands will be considered to constitute manufacture of such equipment.

CTIA also supports the Commission's proposal to add language to Part 15 to clarify that scanners manufactured prior to the effective date of the existing rules are subject to Part 15 restrictions with respect to subsequent modifications.

Scanners Should Be Designed To Prevent Reception of Cellular Signals and To Preclude Modification

As noted above, the manufacture and marketing of scanners that are able to receive cellular service is prohibited. CTIA therefore supports the Commission's proposal to modify its rules to require an "image rejection ratio" of 38 dB in the cellular band for any frequency to which the receiver can be tuned.

In addition, as the Commission recognizes, the current requirements do not make it difficult for individuals with appropriate technical know-how to modify such scanners, after their manufacture, to receive cellular service.[10]

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[10] *See* NPRM, at ¶ 10. Unfortunately, such "know-how" is widely available. Yahoo identifies 83 Internet web sites dedicated to "scanner modifications."

Accordingly, Part 15 should be amended to require that scanning receivers be designed to preclude modification of the device to receive cellular transmissions.

CTIA supports the Commission's proposal to require that scanners be designed so that their tuning and control circuitry is inaccessible, and to require that scanners be designed so that any attempt to modify the device to receive cellular transmissions will likely render it inoperable. CTIA believes that these design decisions are best made by the manufacturer, but that the Commission should be aggressive in denying certification to any design that post-market surveillance demonstrates is ineffective in preventing modification.

Part 15 Should Be Amended To Prohibit the Marketing and Assembly of Scanning Receivers In Kit Form

At present, scanning receivers marketed in kit form do not have to be authorized, even though equipment authorization would be required if the finished product were marketed.[11] As a result, scanning receivers marketed as kits are often able to receive cellular transmissions, in contravention of Section 302(d)(1) of the *Communications Act* which directs the Commission to deny equipment

[11] *See* NPRM at ¶ 18.

authorization to any scanning receiver that is capable of receiving cellular communications.

Accordingly, CTIA supports the Commission's proposal to prohibit the importation and manufacture of scanning receiver and frequency converter kits that are capable of receiving and decoding signals from the Cellular Service frequency bands. The Commission's proposal to amend Section 15.121(e) to prohibit the marketing and assembly of scanning receivers (and frequency converters designed for use with scanning receivers) in kit form will close an important loop-hole in the current rules.

A Carrier's Legitimate Use of Scanning Receivers as Test Equipment Should Be Exempted

The current rules do not specifically indicate that scanning receivers and other equipment used for testing purposes by authorized personnel are exempt from Part 15.[12] However, the Commission historically has interpreted test equipment as being exempt from the definition of a scanning receiver, and in this proceeding has proposed to "codify" this exemption by defining test equipment as equipment which "is not marketed or sold to the general public and is used by professional technical personnel in conjunction

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[12] *See* NPRM at ¶ 17.

with testing of equipment or systems or for scientific investigations."[13]

CTIA is concerned that the language proposed by the Commission may create an "exception" large enough to swallow the many other beneficial amendments to the scanning receiver rules. CTIA proposes that the test equipment language be tightened. This can be done by restricting not only the marketing of test equipment to unauthorized persons, but to also restricting the manufacturer or any person or entity that has control or custody of such equipment from making it available to any unauthorized person. This will provide a "brighter line" and help preclude illegal purchases of scanning equipment by members of the general public for *purported* use in "testing" or "scientific investigations."

Section 15.121(b) provides that scanning receivers marketed solely for use by communications service providers will not be subject to Part 15 restrictions.[14] Although Section 15.121(b) defines the exempted equipment as that "manufactured . . . and marketed" for use by such

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[13] Id.

[14] 47 C.F.R. § 15.121(b).

providers[15], the rule is not clear as to who may purchase such equipment and what constitutes legitimate use of scanning receivers. CTIA proposes that the Commission incorporate the language of 18 U.S.C Section 2511 (2)(a)(i) into its rules. In other words, the Commission should clarify that scanning receivers may lawfully be used by "officers, employees, and agents of wireless service providers" as "a necessary incident to the rendition of his service or to the protection of the rights or property of the provider."[16] Adopting this language would diminish any ambiguity regarding service providers' legitimate use of scanning receivers and minimize the potential for abuse by unauthorized persons.

Manufacture of Equipment in Violation of Section 705

CTIA welcomes the Commission's proposal to amend its rules to reflect the language in Section 705(e)(4) of the *Communications Act* which makes it unlawful for any person to manufacture, assemble, modify, import, export, sell, or distribute any electronic, mechanical, or other device or equipment that is intended for reception and divulgence or

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15 Id. With respect to the description of these providers, Section 15.121(b) refers to the language used in Title 18 U.S.C. Section 2512(2). See id.; 18 U.S.C. § 2512(2) (1995).

16 Id.

beneficial use of radio communications.[17] In order to insure that the public is informed of this provision, CTIA proposes that the Commission amend its Labelling Requirements to require scanning receivers to include the language of Section 705(e)(4) on the label required by Section 15.19 of its Rules.

Conclusion

CTIA supports the Commission's goals to protect the privacy of cellular communications and respectfully requests that the Commission make the aforementioned modifications to Part 15 of the Commission's rules.

Respectfully submitted,

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[17] NPRM at ¶20, *citing* 47 U.S.C. § 605(e)(4).